

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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[CC:INTL:B02]

PLR-101146-07

Date :

March 02, 2010

In Re:

Legend

Taxpayer =

Company A =

Company B =

Company C =

Company D =

Company E =

Company F =

Company G =

Company H =

Company J =

State K =

Year L =

Date M =

N =

P =

Q =

City R =

Country S =

Country T =

City U =

Country V =

Country W =

Country Y =

Country Z	=
Country AA	=
City BB	=
State CC	=
Country DD	=
State EE	=
Country FF	=
Country GG	=
Country HH	=
FTA 1	=
FTA 2	=
FTA 3A	=
FTA 3B	=
FTA 4	=
FTA 5	=
FTA 6	=
FTA 7	=
FTA 8	=
FTA 9	=
FTA 10	=
FTA 11	=
FTA 12	=
FTA 13	=
FTA 14	=
FTA 15	=
FTA 16	=
FTA 17	=
FTA 18	=
FTA 19	=
FTA 20	=

FTA 21 =
FTA 22 =

FTA 23 =

Dear :

This is in reply to a ruling request dated December 29, 2006 submitted on your behalf by your authorized representative. Additional information was provided in letters dated January 25, 2008 and January 8, 2009. A ruling has been requested to clarify that certain subsidiaries and foreign transfer agents (FTAs) of Taxpayer qualify as a bank or other financial institution under Treas. Reg. §1.165-12(c)(1)(iv).

Background

Taxpayer is the parent of a world-wide financial group based in State K. Taxpayer's group provides investment management, asset and fund administration, fiduciary and banking services for corporations, institutions, and individuals through a network of N offices in the United States and overseas. Taxpayer's group includes FTAs, each of which is a controlled foreign corporation of Taxpayer within the meaning of section 957(a) of the Internal Revenue Code.

The FTAs provide transfer agency services to a wide range of investment fund vehicles ("Fund(s)") domiciled outside the U.S. Transfer agency services involve maintaining and administering investors' accounts opened by the investors in such Funds. The investors' accounts are held at various Taxpayer banking entities and are all located outside of the U.S. The FTAs facilitate the payments of the proceeds of share repurchases and of dividends (part of each dividend may include an interest portion) on behalf of the Funds to the investors' Fund accounts and later arrange for the transfer of these monies to the investors' bank accounts by telegraphic transfer or by check.

The FTAs also conduct financial service activities that are subject to regulations designed to prevent money laundering and/or terrorist financing. Certain Funds are required by non-U.S. jurisdictions to withhold tax on payments made to investors, and this tax withholding function is performed by the FTAs. Funds subject to P are required to report redemption and dividend payments and obtain a Taxpayer Identification Number ("TIN") for a Q resident individual investor, and this function is performed by FTAs. Certain Funds' regulatory requirements require FTAs to prohibit or limit the number of U.S. investors in a Fund.

The FTAs are subject to "know your customer" ("KYC") documentation requirements by the jurisdictions in which they are resident and by the US anti-money laundering regulatory requirements. A Fund's KYC responsibilities are discharged by the FTA collecting the investor's KYC documentation as part of the FTA's established

procedures to obtain, review, and maintain evidence sufficient to establish the investor's identity and the investor's status as a foreign person.

LAW AND ANALYSIS

Generally, pursuant to sections 6042(a), 6045, and 6049(a) of the Internal Revenue Code, every person who makes a payment of interest, dividends, or broker proceeds is required to report this payment ("reportable payment") on a return with the IRS unless an exception to reporting applies. In addition, if certain conditions occur such as a failure by a payee to furnish his TIN to the payor or a payee certification failure by the payee, the payor is required to backup withhold on the payment under section 3406(a)(1). However, a payment is not subject to backup withholding if it falls within the documentary evidence exception of Treas. Reg. §1.6049-5(c)(1). See Treas. Reg. §31.3406(g)-1(e).

Treas. Reg. § 1.6049-5(c)(1) provides: "A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) in the case of a payment made outside the United States to an offshore account, in the case of a payment made to a U.S. possessions account or, in the case of broker proceeds described in § 1.6045-1(c)(2), in the case of a sale effected outside the United States (as defined in § 1.6045-1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an offshore account means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (i.e., other than in any of the fifty States or the District of Columbia) and outside of possessions of the United States."

A payment qualifies for the documentary evidence exception if it is both a payment made outside the U.S. and a payment to an offshore account. A payment is made outside the U.S. if the payor completes the acts necessary to effect payment or sale outside the U.S. See Treas. Reg. §§ 1.6042-3(b)(1)(iv), 1.6045-1(g)(3)(iii)(A), 1.6049-5(e)(1). All of the accounts that FTAs maintain for Funds are located outside the U.S. All of FTAs' payments of interest and dividends and all sales creating broker proceeds are affected outside the U.S.

The phrase "offshore account" means an account that is located outside the U.S. and is maintained at a U.S. or foreign bank or other financial institution. Treas. Reg. §1.1441-1(c)(5) defines "financial institution" by reference to the definition in Treas. Reg. §1.165-12(c)(1)(iv). This regulation provides, in part, that "financial institution" means, among other things, "a person which itself is, or more than 50 percent [of whose stock]...is owned by a person which is-...engaged in the conduct of a banking, financing, or similar business."

Each of the FTAs would satisfy the documentary evidence exception if it is engaged in the conduct of a banking, financing, or similar business or if it is a more than

50% owned subsidiary of a company which is engaged in the conduct of a banking, financing, or similar business.

Company A is the principal subsidiary of Taxpayer and was organized as a State K corporation in Year L. On Date M, Company A became a subsidiary of Taxpayer, and Taxpayer became a bank holding company. Company A is a member of the Federal Reserve and maintains banking branches in City R, Country S, Country T, and City U. Company A directly owns 99% of the stock of Company B, 100% of the stock of Company C, 100% of the stock of Company D, 100% of Company H and 100% of Company J.

Company B was incorporated in Country V and is an intermediate holding company that owns 99% of the stock of FTA 1. FTA 1 is a qualified intermediary and conducts banking, global custody, trust and treasury activities in Country V and is subject to the Country V money laundering laws. FTA 1 is engaged in the conduct of a banking business.

Company C is an intermediate holding company organized in Country W that owns 100% of the stock of FTA 2. FTA 2 is a Qualified Intermediary, is registered in Country W and Country Y, is a Country Z bank, markets custody products and maintains bank branches in Country AA and City BB. FTA 2 is engaged in the conduct of a banking business.

Company A owns 100% of FTA 3A which is located in Country T, provides trust and banking services, and is regulated as a trust company and financial entity. FTA 3B is a branch of FTA 3A that is separately regulated as an authorized foreign bank and financial entity in Country T. FTA 3A and FTA 3B are engaged in the conduct of a banking, financing or similar business.

Company D was organized in State EE for the purpose of conducting international banking business and owns 99% of FTA 4 located in Country HH, 100% of FTA 5 located in Country DD and 100% of FTA 10 located in Country S. Thus, FTA 4, FTA 5, and FTA 10 are more than 50% owned by a company that is engaged in the conduct of a banking business. Company D also owns 100% of Company E, a holding company in Country DD which owns 100% of FTA 6, 100% of FTA 7, and 100% of FTA 8, each of which is located in Country DD. Thus, FTA 6, FTA 7, and FTA 8 are more than 50% owned by a company that is engaged in the conduct of a banking business. Company D also owns 100% of Company F, which is registered in Country W and Country Y as an investment holding company. Company F owns 100% of FTA 9 in Country W. Thus, FTA 9 is more than 50% owned by a company that is engaged in the banking business.

Company D owns 99% of Company G, a holding company incorporated in Country V. Company G owns 100% of FTA 11 in Country DD, 99% of FTA 12 in

Country V, 100% of FTA 13 in Country W, 100% of FTA 14 in Country W, 99% of FTA 15 in Country V, and 99% of FTA 19 in Country V. FTA 15 owns 100% of FTA 16 in Country DD, 100% of FTA 17 in Country FF, and 99% of FTA 18 in Country FF. Thus, FTA 11, FTA 12, FTA 13, FTA 14, FTA 15, FTA 16, FTA 17, FTA 18, and FTA 19 are more than 50% owned by a company that is engaged in the banking business.

Company H is a State CC corporation that owns 100% of FTA 20 in Country T, and FTA 21 in Country W. Company H, FTA 20 and FTA 21 provide investment and trust services for foundations, endowments, pension plans and other institutional investors. FTA 20 and FTA 21 are engaged in a banking, finance or similar business.

Company J is a 100% owned subsidiary of Taxpayer and was established as a holding company. Company J owns 99% of FTA22 which was incorporated in Country AA and provides portfolio management services, administrative and transfer agency services, and marketing and distribution activities for registered mutual funds and is subject to the anti-money laundering regulations of Country AA. FTA22 is engaged in a banking, finance or similar business.

Taxpayer owns 100% of FTA23 which was incorporated in Country GG to service and provide investment management tools to Taxpayer's Country GG clients. FTA23 is regulated as a financial instruments business and is subject to anti-money laundering regulations of Country GG. FTA23 is engaged in a banking, finance or similar business.

RULING

Based on the information submitted and the representations made, each of FTA 1, FTA 2, FTA 3A, FTA 3B, FTA 4, FTA 5, FTA 6, FTA 7, FTA 8, FTA 9, FTA 10, FTA 11, FTA 12, FTA 13, FTA 14, FTA 15, FTA 16, FTA 17, FTA 18, FTA 19, FTA 20, FTA 21, FTA 22, and FTA 23 is a financial institution within the meaning of Treas. Reg. §§1.165-12(c)(1)(iv).

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Except as specifically set forth above, no opinion is expressed regarding the federal tax consequences of the transactions described above under any other provisions of the Code or regulations.

A copy of this letter ruling should be attached to Taxpayer's Form 945 for the appropriate year.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jeffery G. Mitchell
Special Counsel (International)